Rochester Tel Center
180 South Clinton Avenue
Rochester, New York 14646-0700

716-777-1028

Michael J. Shortley, III
Senior Corporate Attorney

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FEDERAL COMMUNICATIONS COMMISSION
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RochesterTel

January 7, 1993

92-100

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

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Re: General Docket No. ~~90-314~~

Dear Ms. Searcy:

Enclosed for filing please find an original plus eleven (11) copies of the Reply Comments of Rochester Telephone Corporation in this proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Downtown Copy Center

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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Amendment of the Commission's Rules To Establish New Personal Communications Services	)	Gen. Docket No. 90-314 ET Docket no. 92-100

REPLY COMMENTS OF
ROCHESTER TELEPHONE CORPORATION

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JOSEPHINE S. TRUBEK
General Counsel

ROCHESTER TELEPHONE CORPORATION
180 South Clinton Avenue
Rochester, New York 14646
(716) 777-6713

Michael J. Shortley, III
of Counsel

January 7, 1993

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OFFICE OF THE SECRETARY

Before the
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Washington, D.C. 20554

In the Matter of Amendment of the Commission's Rules To Establish New Personal Communications Services	Gen. Docket No. 90-314 ET Docket no. 92-100

REPLY COMMENTS OF
ROCHESTER TELEPHONE CORPORATION

Introduction and Summary

Rochester Telephone Corporation ("Rochester") submits this reply in response to the comments received on the Commission's Notice of Proposed Rulemaking in this proceeding.[1/] Although the comments raise numerous policy, economic and technical issues, Rochester focuses its reply on those issues that are most critical to ensuring the deployment of personal communications services ("PCS") in the most efficient and expeditious manner. These issues encompass three areas: (1) eligibility to apply for PCS licenses; (2) market structure; and (3) licensing procedures.

1/ Amendment of the Commission's Rules To Establish New Personal Communications Services, Gen. Dkt. 90-314, ET Dkt. 92-100, Notice of Proposed Rulemaking, FCC 92-333 (released Aug. 14, 1992) ("NPRM").

First, the Commission should decline to preclude any technically and economically qualified entity from holding a PCS license. Those parties that advocate the disqualification of exchange carriers,[2/] cellular carriers,[3/] or both[4/] have totally failed to demonstrate that such exclusionary action is necessary to protect competition. Any exclusionary rule would achieve no more than to remove one or two classes of the most potentially competitive PCS providers from the field. The Commission's Office of Policy and Plans ("OPP") recognizes the enormous benefits that such a rule would sacrifice.[5/] Any residual competitive concerns can best be addressed through nonstructural safeguards and appropriate, reciprocal interconnection policies.

Second, the Commission should develop a market structure that will best promote the competitive provision of PCS. To accomplish this result, the Commission should define the geographic scope of PCS licenses as coterminous with the

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2/ E.g., Vanguard Cellular at 13-15.

In this reply, Rochester will cite to the parties' comments by naming the party followed by a citation to the relevant pages of that party's comments.

3/ E.g., Pertel at 8-9.

4/ E.g., Viacom at 18-19; Teleport Denver at 2-5.

5/ Office of Policy and Plans, The Cost Structure of Personal Communications Services, OPP Working Paper No. 28 at 54-60 (Nov. 1992) ("OPP Paper").

cellular Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs") and award five licenses per geographic area. This proposal received broad support from all industry participants.[6/] Those advocating larger geographic areas or a smaller number of licensees[7/] have not demonstrated the necessity for restricting the number of PCS licensees in this manner. In particular, the Commission should reject MCI's proposal to license only three national consortia.[8/]

Third, the Commission should develop licensing procedures that are both fair and efficient. To achieve this end, the Commission should rely upon streamlined, comparative hearings.[9/] Only as a last resort should the Commission rely upon lotteries, and then only subject to stringent qualification criteria.

6/ E.g., United States Telephone Association ("USTA") at 19-22, 30-31; McCaw at 10-11, 14-15; Fleet Call at 4-9; New York Public Service Commission ("NYPSC") at 2, 5-6.

7/ E.g., Time Warner at 4-11.

8/ MCI at 4-6.

9/ Rochester at 24-25.

Argument

I. THE COMMISSION SHOULD DECLINE TO BAR EXCHANGE CARRIERS AND CELLULAR CARRIERS FROM HOLDING PCS LICENSES.

Those parties that argue for such exclusions raise the tired litany of unproven complaints regarding cross-subsidization and discrimination by exchange carriers and/or cellular carriers as justification for barring those entities from holding PCS licenses. The Justice Department ("DOJ") reaches a similar conclusion with respect to cellular carriers, but only on the basis that one entity should not hold more than one license in a given market.[10] These positions are without merit. Accordingly, the Commission should decline to adopt any of these proposals, including the proposal set forth in the NPRM to exclude cellular carriers and their affiliates.[11]

PCS is likely to become both substitutable for and complimentary to cellular and landline exchange services. Because of this characteristic of PCS, for exchange carriers or cellular carriers to engage in exclusionary conduct would be economically irrational. As a competitive service, PCS could displace the services currently provided by cellular and exchange carriers. Discriminatory interconnection policies

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10/ DOJ at 29-30.

11/ NPRM, ¶ 67.

will simply reduce the value of services provided by exchange and cellular carriers. To the extent that PCS providers are unable to secure satisfactory interconnection arrangements, they will be encouraged to bypass existing providers entirely, thereby causing exchange and cellular carriers to lose revenues from traffic that would otherwise stay on their networks.

Moreover, if one such company attempts to engage in such practices, its competitors will provide those forms of interconnection requested by PCS providers. If one cellular carrier engages in discriminatory interconnection practices, the other licensee stands to gain substantial revenues by meeting that demand. Alternative local exchange providers -- such as cable companies and competitive access providers -- will preclude exchange carriers from engaging in discriminatory conduct.[12/] Thus, the Commission may safely rely upon market forces to prevent discrimination or cross-subsidization. Restrictive entry rules are unnecessary.

Such rules would also be directly anticompetitive. They would remove from the field two classes of participants likely to be the most effective PCS providers. Local exchange and cellular carriers possess enormous experience in providing telecommunications services to the public. It simply makes no sense to exclude such potentially powerful competitors. An

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12/ E.g., USTA at 15-19; Rochester at 10-12.

exclusionary entry policy would do no more than protect one class of competitors, not competition.

Exclusionary rules would also preclude customers from realizing the benefits of the economies of scope inherent in the joint provisions of local exchange, cellular and personal communications services.[13/] OPP has recognized that such policies would sacrifice these economies.[14/]

The comments of those favoring exclusionary rules demonstrate the desirability of rejecting that approach. Vanguard Cellular, for example, favors barring exchange carriers -- and their affiliates -- but not cellular carriers from holding PCS licenses.[15/] If adopted, such a rule would benefit the non-wireline cellular licensees to the detriment of their wireline competitors.

There is no basis for this approach. If possession of a cellular license is sufficient to disqualify a potential licensee, that criterion should apply to all cellular licensees. Affiliation with a local exchange carrier adds nothing to the potential -- which does not exist in any

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13/ NPRM, ¶¶ 66, 73.

14/ OPP Paper at 43-45.

15/ Vanguard Cellular at 13-15.

event -- for anticompetitive conduct, as DOJ has concluded.[16/]

Similarly, there is no reason to bar cellular carriers from holding PCS licenses, as some parties have suggested.[17/] The reasoning behind this approach is not apparent. However, if it is meant to bar cellular carriers and their exchange carrier affiliates, this would exclude exchange carriers serving virtually all of the nation's access lines from holding PCS licenses. As Rochester demonstrated above,[18/] such a rule would be both unnecessary and anticompetitive.[19/]

Even if the Commission's concerns were valid, its proposed eligibility restrictions are far too narrow. The Commission would also need to bar others that could engage in the same type of conduct. Cable operators -- whom Congress recently reregulated[20/] -- should be equally

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16/ DOJ at 30.

17/ *E.g.*, Pertel at 8-9.

18/ *See supra* at 4-6.

19/ For this reason the Commission should reject Sprint's proposal only to permit entities with non-controlling cellular interests in a particular market to qualify for PCS licenses. Sprint at 8-13. Although not as restrictive as a total ban on exchange and cellular carrier eligibility, it is equally unnecessary.

20/ Cable Television Consumer Protection and Competition Act of 1992.

disqualified.[21/] Similarly, interexchange carriers and competitive access providers -- who also have the "ability" to engage in such conduct should be disqualified. Rochester is certainly not suggesting that the Commission adopt such rules. It raises this concern merely to demonstrate that the Commission should not adopt any eligibility restrictions.

If the Commission retains any residual concerns regarding discrimination or cross-subsidization, it may address those concerns through appropriate and reciprocal interconnection policies and nonstructural safeguards. The Commission has provided radio-based carriers with a federally-protected right to interconnect with the public switched telephone network[22/] and proposes to extend that right to PCS providers.[23/] This policy is entirely appropriate but should be made reciprocal. As Rochester demonstrated in its comments, exchange carriers and cellular carriers possess as much interest in interconnecting with PCS networks as PCS providers have in

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21/ Cablevision actually suggests that some PCS spectrum be set aside for cable operators. Cablevision at 13-15. There is no justification for this proposal. Congress has found it necessary to reregulate cable operators. Adding to their market power through a set-aside would plainly be anticompetitive.

22/ Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carriers, Declaratory Ruling, 2 FCC Rcd. 2910 (1987).

23/ NPRM, ¶ 99.

interconnecting with exchange and cellular networks.[24/] Moreover, reciprocity will facilitate the Commission's goal of establishing a seamless communications capability. The Commission may further advance that goal by classifying PCS as common carriage. Such a classification would require PCS providers to serve all potential customers on a non-discriminatory basis, thus encouraging the provision of PCS to the widest possible audience. Classifying PCS as private carriage -- with no such obligation and no concomitant interconnection obligation -- would merely constitute a waste of scarce spectrum resources.[25/]

The Commission may also rely upon other nonstructural safeguards to the extent it deems necessary. The Commission has applied such safeguards in other contexts[26/] and there is no reason that this approach cannot work here.[27/]

Finally, DOJ's concerns regarding undue concentration that could result from cellular carriers holding PCS licenses[28/] rests upon an unduly narrow market definition.

24/ Rochester at 29-30.

25/ _See id_. at 20-21.

26/ _See_, _e.g._, _Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies_, CC Dkt. 86-79, Order, FCC 86-529 (released Jan. 12, 1987).

27/ _See_, _e.g._, DOJ at 29.

28/ _Id_. at 22-29.

The Department's analysis assumes that the product market in question should be defined as the market for "mobile services." That definition excludes directly substitutable services and providers -- such as services that are or potentially can be provided by local exchange carriers, cable operators, competitive access providers and the like. Actual and potential competition for telecommunications services is likely to be far more vigorous than the DOJ anticipates. Moreover, if the Commission adopts the proposals to award five licenses in each geographic market, there will be substantially more competitors than the DOJ assumed in its analysis, thereby significantly reducing concerns regarding market concentration.

On this basis, the Commission should decline to disqualify exchange carriers or cellular carriers from holding PCS licenses.

II. THE COMMISSION SHOULD ADOPT MARKET STRUCTURE RULES THAT FACILITATE EFFICIENT AND COMPETITIVE PROVISION OF PCS.

The Commission should design its market structure rules -- number of licenses, amount of spectrum allocated and geographic market definition -- to facilitate the maximum number of competitors, consistent with licensees' needs for spectrum to provide service.[29/] The proposals to limit the number of

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29/ *E.g.*, NYPSC at 5-6.

licensees below the maximum that can be accommodated[30/] or to define service territories larger than necessary for the efficient provision of service[31/] fail on both counts.

Rochester[32/] and others[33/] have proposed that the Commission award five licenses per geographic area and allocate 20 MHz of spectrum to each licensee. The Commission has recognized that it may be able to accommodate five licensees per geographic area.[34/] The only justification for awarding fewer licenses would be that the amount of spectrum available can only accommodate fewer licensees. Sprint, for example, attempts to demonstrate that a PCS licensee will require 30 MHz of spectrum, thereby reducing the number of potential licensees to three.[35/]

If Sprint's premise were valid, that would provide a justification for awarding only three licenses. AT&T,

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30/ E.g., Time Warner at 6-8 (2).

31/ E.g., MCI at 4 (national); Cox at 11-13 (use of Major Trading Areas).

32/ Rochester at 13-16.

33/ E.g., AT&T at 9-10; USTA at 30-31; Fleet Call at 7-9; NYPSC at 5-6.

34/ NPRM, ¶ 34.

35/ Sprint at 13-14.

however, has demonstrated that 20 MHz of spectrum should be more than sufficient to permit a licensee to provide service.[36/] Moreover, AT&T's conclusion makes sense. PCS is likely to be more local in nature than cellular and the Commission provided each cellular licensee with 25 MHz of spectrum. Thus, given the amount of spectrum that the Commission has decided to allocate to PCS, it can accommodate five licensees per market.[37/]

Similarly, the Commission should base its geographic market definitions on the need to provide a sufficient geographic area for licensees to offer PCS services efficiently. The use of any larger market definitions will unnecessarily restrict the number of potential PCS providers. Because PCS will likely evolve as an essentially local service, use of the cellular MSAs and RSAs probably represents the most appropriate geographic market definition for PCS.[38/]

The use of larger market areas, such as those based upon Rand-McNally's Major Trading Areas ("MTAs") or Basic Trading

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36/ AT&T at 9-11.

37/ Any requests that the Commission award fewer than five licenses based upon concerns other than spectrum allocation should simply be rejected as anticompetitive.

38/ See, e.g., Rochester at 16-18; McCaw at 14-18; USTA at 19-22.

Areas ("BTAs"),[39/] are unnecessary. The record would not support a conclusion that either of these market definitions -- both of which are substantially larger than either the MSAs/RSAs or LATAs -- constitute the minimum efficient size for the provision of PCS. Absent such a showing, there is no basis for a conclusion that a smaller market definition would preclude PCS providers from realizing economies of scale in their operations. As such, use of larger market areas would unnecessarily restrict the number of PCS providers.

The most anticompetitive and unworkable proposals of all are those set forth by the parties advocating national licenses. In particular, the Commission should flatly reject MCI's proposal that it license three national consortia.[40/]

If market sizes based upon MTAs or BTAs are unnecessarily restrictive, nationwide licenses are even more so. Indeed, nationwide licensing would provide those licenses with enormous competitive advantages over providers of substitutable services -- such as local exchange and cellular service.[41/] Possession of a nationwide license would also provide that licensee with a tremendous disincentive to interconnect with other service

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39/ *See, e.g.*, Cox at 11-13.

40/ MCI at 4-7.

41/ Rochester at 18.

providers. Such a result would defeat the goal of seamless interconnection among all service providers.[42/] Indeed, AT&T, which could have been expected to benefit from nationwide licensing, opposes the concept.[43/]

MCI's proposal to award three licenses to consortia of "sophisticated national entit[ies] and local operators"[44/] is not only anticompetitive, its adoption would mire the Commission in the worst features of broadcast comparative proceedings. The Commission would need to determine the qualifications and *bona fides* of the supposed local operators, the degree of control that the "sophisticated national entity" would exercise over the local operators and the like. Especially in the common carrier context, the Commission should not involve itself in such licensee qualification disputes.[45/] MCI's proposal invites this regulatory nightmare.

42/ *See id*. at 28-29.

43/ AT&T at 12.

44/ MCI at iv.

45/ In determining the fitness of a particular entity to hold a common carrier radio license -- where, unlike the broadcast field, content should be irrelevant -- the Commission should adopt important, yet relatively narrow, fitness criteria, such as those it recently adopted for cellular license renewals. *See Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Cellular Radio Telecommunications Service*, [redacted]

Accordingly, the Commission should utilize the MSAs and RSAs to define the geographic scope of a PCS license and award five licenses, with 20 MHz of spectrum each, per geographic area.

III. THE COMMISSION SHOULD ADOPT RATIONAL AND EFFICIENT PROCEDURES FOR AWARDING PCS LICENSES.

Congress has not provided the Commission with the authority to engage in auctions. Therefore, the Commission has two alternatives, comparative hearings and lotteries. Comparative hearings represent the more desirable approach. As the Commission has discovered, lotteries will simply invite speculation -- regardless of the means by which the Commission attempts to deter that speculation. Indeed, lotteries have the potential for overwhelming the Commission's resources to process applications, thereby delaying the provision of services to the public.[46/]

Although comparative hearings are not ideal, they at least significantly reduce the opportunity for speculation. Applicants subjected to comparative hearings must be prepared to demonstrate that they are financially and technically qualified to offer service. In addition, the Commission can

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46/ NPRM, ¶ 88.

draft comparative hearing procedures to reduce the burden on the Commission and applicants.[47/]

However, if the Commission believes that it must rely upon lotteries, it should adopt stringent technical and financial qualification criteria, high filing fees and subject lottery winners to stringent post-award guidelines.[48/] Only in this manner will the Commission be able to minimize the potential for speculative abuse inherent in the lottery process.

Conclusion

For the foregoing reasons, the Commission should adopt the proposals set forth herein.

Respectfully submitted,

JOSEPHINE S. TRUBEK
General Counsel

ROCHESTER TELEPHONE CORPORATION
180 South Clinton Avenue
Rochester, New York 14646
(716) 777-6713

Michael J. Shortley, III
of Counsel

January 7, 1993

(3175P)

47/ E.g., Rochester at 24-25.

48/ Id. at 26-28.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 1993, I caused copies of the foregoing Reply Comments of Rochester Telephone Corporation to be served on all of the parties on the attached Service List by depositing same with the United States Post Office, postage prepaid, first class mail.

Michael J. Shortley, III

Attachment

(3175P)

Service List

Floyd S. Keene
JoAnne G. Bloom
30 South Wacker Drive
Suite 3900
Chicago, IL 60606

R. Michael Senkowski
Victoria F. Phillips
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Randall B. Lowe
Sherry F. Bellamy
John E. Hoover
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, D.C. 20005-2088

John C. Carrington
Managing Director
Mercury Personal Communications
Network, Ltd.
1 Harbour Exchange Square
London E14 9GET
United Kingdom

Thomas Gutierrez
David A. LaFuria
Attorneys for MTEL PCN, Inc.
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Seventh Floor
Washington, D.C. 20006

Gene H. Kuhn
Director Telecommunications
Transmission
Union Pacific Railroad Co.
Missouri Pacific Railroad Co.
1416 Dodge Street
Omaha, Nebraska 68179

Robert M. Jackson, Its attorney
Blooston, Modkofsky, Jackson &
Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037

David A. Hendon
Deputy Director of Technical Affairs
Telecommunications and Posts Division
Department of Trade and Industry
Kingsgate House
66-74 Victoria Street
London SW1E 6SW

William H. Talmage, Esq.
Chief Counsel, Regulatory Section
Law Department
NCR Corporation
1700 S. Patterson Blvd.
Dayton, OH 45479

Karl Berolzheimer
Senior Vice-President,
General Counsel and Secretary
Centel Corporation
8725 Higgins Road
Chicago, Illinois 60631

Andrew D. Lipman
Catherine Wang
Shelly L. Spencer
Swidler & Berlin
3000 K Street, N.W.
Washington, D.C. 20007

Counsel for GEC Plessey
Telecommunications Ltd.

Jonathan D. Blake
D. Scott Coward
Covington & Burling
P.O. Box 7566
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Attorneys for American
Personal Communications

Robert S. Foosaner, Esq.
Lawrence R. Krevor, Esq.
Fleet Call, Inc.
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, D.C. 20036

Booth, Freret & Imlay
1920 N Street, N.W.
Suite 150
Washington, D.C. 20036

Christopher D. Imlay, Its Counsel for The American Radio Relay League, Incorporated

Michael S. Slomin, Senior Attorney
Bell Communications Research, Inc.
290 W. Mt. Pleasant Avenue
Livingston, New Jersey 07039

Wayne V. Black
Frederick J. Day
Michael R. Bennet
Keller and Heckman
1150 17th Street, N.W.
Suite 1000
Washington, D.C. 20036

Attorneys for The American Petroleum Institute
Attorneys for Special Industrial Radio Service Association, Inc.

Janice E. Kerr
Edward W. O'Neill
Patrick S. Berdge
505 Van Ness Avenue
San Francisco, CA 94102

Charles T. Force
Associate Administrator for Space Operations
National Aeronautics and Space Administration
Washington, D.C. 20546

James R. Young
Lawrence W. Katz
Attorneys for Bell Atlantic
1710 H Street, N.W.
Washington, D.C. 20006

Stuart Dolgin
House Counsel
17 Battery Place, Suite 1200
New York, New York 10004-1256

Charles M. Meehan
Jeffrey L. Sheldon
Mara J. Pastorkovich
Utilities Telecommunications Council
1620 Eye Street, N.W.
Suite 515
Washington, D.C. 20006

G. Todd Hardy
Vice President and General Counsel of PCN America, Inc.
153 East 53rd Street
Suite 5500
New York, New York 10022

William L. Fishman
Sullivan & Worcester
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Hollis G. Duensing
Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001

Raymond A. Kowalski
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W.
Washington, D.C. 20037

Stanley J. Moore
Attorney for Pacific Telesis Group
1275 Pennsylvania Avenue, N.W.
4th Floor
Washington, D.C. 20004

John D. Lane
Robert M. Gurss
Chartered
1666 K Street, N.W., #1100
Washington, D.C. 20006-2866

Attorneys for Los Angeles County Sheriff's Department

Alan Y. Naftalin
George Y. Wheeler
Margot S. Humphrey
Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Telephone and Data Systems, Inc.

James F. Lovette
Apple Computer, Inc.
20525 Mariani Avenue, MS46A
Cupertino, CA 95014

David L. Hill
Audrey P. Rasmussen
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006

Albert Halprin
Stephen L. Goodman
Verner, Liipfert, Bernhard McPherson and Hand
901 15th Street, N.W.
Washington, D.C. 20005

Counsel for Northern Telecom Inc.

James A. Dwyer, Jr.
2100 Electronics Lane
Fort Myers, FL 33912

John G. Lamb, Jr.
Northern Telecom Inc.
2100 Lakeside Boulevard
Richardson, TX 75081

Russel H. Fox, President
American SMR Netowrk Association Inc.
1835 K Street, N.W. Suite 203
Washington, D.C. 20006

Werner K. Hartenberger
Suzanne M. Perry
Adina Kanefield
Dow, Lohnes & Albertson
1255 Twenty-Third Street, N.W.
Suite 500
Washington, D.C. 20037

Their Attorneys for Cox Broadcasting Multimedia, Inc.

Daniel L. Bart
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Joseph P. Markoski
Jody D. Newman
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

Attorneys for County of Los Angeles

Donald F. Evans
Director, Technical Regulatory
Affairs
MCI Telecommunications Corporation
1133 19th Street, N.W.
Washington, D.C. 20036

James G. Ennis, Esq.
Barry Lambergman, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Dr. Robert L. Riemer
Senior Program Officer
Board on Physics and Astronomy
National Research Council
2101 Constitution Avenue, N.W.
Washington, D.C. 20418

PCN Associates
1344 Madonna Road
Suite 207
San Luis Obispo, CA 93405

Eric J. Schimmel
Vice President
TIA
2001 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006-1813

M. John Bowen, Jr.
John W. Hunter
McNair Law Firm, P.A.
1155 Fifteenth Street, N.W.
Washington, D.C. 20005

Attorneys for Rock Hill Telephone Co.
Fort Mill Telephone Company
Lancaster Telephone Company

Daniel J. Miglio
Senior Vice President
Finance & Planning
227 Church Street
New Haven, Connecticut 06510

Pete Wanzenried, Assistant Chief
State of California Dept. of
General Services Telecommunications
Division
601 Sequoia Pacific Blvd.
Sacramento, CA 95814-0282

Veronica M. Ahern
Nixon, Hargrave, Devans & Doyle
Suite 800
One Thomas Circle
Washington, D.C. 20005

Howard C. Davenport
Peter G. Wolfe
Public Service Commission
of the District of Columbia
450 Fifth Street, N.W.
Washington, D.C. 20001

Peter Tannenwald
Arent, Fox, Kintner,
Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Judith St. Ledger-Roty
Nancy J. Thompson
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Attorneys for Paging Network, Inc.

Paul J. Sinderbrand
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Penthouse
Washington, D.C. 20005-3919

Attorneys for The Wireless Cable Association, Inc.

Dr. Michael C. Trahos
D.O., NCE, CET
4600 King Street, Suite 4E
Alexandria, Virginia 22302

Thomas J. Casey
Jay L. Birnbaum
Skadden, Arps, Slate, Meagher
& Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005

Attorneys Cellular Communications, Inc.

Michael C. Rau
Kelly T. Williams
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Attorneys for USA Mobile Communications, Inc. II

John W. Pettit
Thomas K. Crowe
Hopkins & Sutter
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Counsel for Tandy Corporation

David C. Jatlow
Counsel for the Ericsson Corporation
Young & Jatlow
Suite 600
2300 N Street, N.W.
Washington, D.C. 20037

Robert W. Maher, President
Jack W. Whitley
Director of Regulatory Affairs
Cellular Telecommunications
Industry Association
1133 21st Street, N.W.
Suite 300
Washington, D.C. 20036